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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1950

No. 597

ALFRED V. GOO,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

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No.

ALFRED V. GOO,
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PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Alfred V. Goo, petitioner, respectfully prays for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit to review the judgment of said court entered February 9, 1951, affirming the

judgment of the United States District Court for the District of Hawaii entered June 1, 1950.

OPINIONS BELOW.

The memorandum order of the District Court (R. 18) is reported at 10 Federal Rules Decisions 333. The *per curiam* opinion of the Court of Appeals is not reported to date.

SUMMARY STATEMENT OF MATTER INVOLVED.

This case involves the right of an accused in a criminal case to withdraw a plea of guilty prior to sentence pursuant to Rule 32(d) of the Federal Rules of Criminal Procedure.

On February 9, 1950, petitioner appeared before the District Court and pleaded guilty to each of three counts of an information charging him with violations of the Internal Revenue Code (R. 2, 40). The court continued the case to February 20, 1950, for sentence to give petitioner time to settle his civil tax liability (R. 5, 53).

Meanwhile petitioner discharged his former attorneys and engaged new counsel who appeared on February 20, asked for further time to investigate the case and moved to withdraw the plea of guilty. A continuance was granted but motion for withdrawal of plea was denied (R. 7, 8).

On March 27, 1950, petitioner filed a written motion to withdraw his plea of guilty (R. 9). The District

Court denied the motion on May 16, 1950 (R. 16). Petitioner was thereafter sentenced to 4 years' imprisonment and a $3000 fine (R. 29-31).

The District Court ruled that the withdrawal of a plea of guilty before sentence rested in its discretion (R. 22), and in the exercise of that discretion refused petitioner's motion (R. 29). In affirming this ruling, the Court of Appeals held that such motions to withdraw guilty pleas are addressed to the sound discretion of the trial court.

JURISDICTION.

Judgment of the Court of Appeals was entered February 9, 1951. The jurisdiction of this Court is invoked under Section 1254 of Title 28, United States Code, and pursuant to Rule 37(b) of the Federal Rules of Criminal Procedure.

QUESTION PRESENTED.

The question for review is whether a defendant in a criminal case is entitled as a matter of right, under Rule 32(d) of the Federal Rules of Criminal Procedure, to withdraw his plea of guilty before sentence.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

The Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. That question is one of first

impression involving the proper interpretation of Rule 32(d) of the Federal Rules of Criminal Procedure.

Rule 32(d) provides:

> *Withdrawal of Plea of Guilty.* A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

In rejecting petitioner's claim of right under this rule to withdraw his plea on motion made *before* sentence, the Court of Appeals stated that:

> There is complete uniformity in the authorities to the effect that no such right exists * * *.

This is subject to the qualification that the first clause of Rule 32(d) governing withdrawal of plea before sentence has not heretofore received judicial construction. All decided cases deal with the rule's second clause (change of plea *after* sentence) or earlier practice.

That statement by the court below was true prior to adoption by this Court of the Criminal Appeals Rules effective September 1, 1934 (292 U.S. 661). Theretofore any motion to withdraw a guilty plea was deemed addressed to the court's discretion, its allowance depending upon a showing by the defendant of some reason why granting him the privilege would be manifestly just and fair.

Kercheval v. United States 274 U.S. 220 (1927);

Rachel v. United States 61 F (2d) 360 (CCA 8th 1932);

Roberto v. United States 60 F (2d) 774 (CCA 7th 1932).

The same was true under the Criminal Appeals Rules. Granting of any motion within Rule II(4), which required that the motion be made within ten days after entry of a plea of guilty and before sentence, was uniformly held to be in the court's discretion to promote the ends of justice, the burden resting with the accused to show good cause for his change of plea.

Bergen v. United States 145 F (2d) 181 (CCA 8th 1944);

United States v. Colonna 142 F (2d) 210 (CCA 3d 1944);

United States v. Denniston 89 F (2d) 696 (CCA 2d 1937);

See: Von Moltke v. Gillies 332 U.S. 708 (1948).

In revising the rules, this Court codified in the second clause of Rule 32(d) the standard of judicial discretion theretofore applicable to all timely motions for withdrawal of plea, by providing that the trial court *after* sentence might permit the defendant to withdraw his plea in order "to correct manifest injustice." This second clause has been uniformly interpreted to confer discretionary authority to grant a motion made *after* sentence upon the defendant's showing that his substitution of pleas is just and fair.

United States v. Searle 180 F (2d) 209 (CA 7th 1950);

Collins v. United States 176 F (2d) 773 (CA 9th 1949);
United States v. Lias 173 F (2d) 685 (CA 4th 1949);
Stidham v. United States 170 F (2d) 294 (CA 8th 1948);
United States v. Harris 160 F (2d) 507 (CCA 2d 1947).

The court below failed to recognise the intent manifest from the language of the new Rule 32(d), to place withdrawal of a plea of guilty *before* sentence on a different basis from withdrawal *after* sentence. That intent is evidenced grammatically by separation of the chronological stages of criminal proceedings into two independent clauses of the rule and by stating the standard of "manifest injustice" as the criterion *after* sentence but imposing no such standard *before* sentence. Obviously the criteria to be applied in the two cases must be different, otherwise the employment of two clauses to express the same thought would be redundant and meaningless. The court below misapplied a line of authorities inapposite in construing the first clause of Rule 32(d), which has removed disposition of a motion to withdraw a plea of guilty before sentence from the area of judicial discretion. A decision by this Court will settle the meaning of this important rule of criminal procedure.

Wherefore, petitioner prays that a writ of certiorari issue out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the Ninth Circuit, commanding that court to certify

and send to this Court for its review and determination a full and complete transcript of the record and proceedings of said court had in the case numbered and entitled in its docket as "No. 12620, Alfred V. Goo, Appellant, vs. United States of America, Appellee," and that the judgment of said court be reversed by this Court.

Dated, Honolulu, Hawaii,
March 2, 1951.

ALFRED V. GOO,
Petitioner,
By J. GARNER ANTHONY,
Counsel for Petitioner.

ROBERTSON, CASTLE & ANTHONY,
Of Counsel.